

1 HONORABLE RONALD B. LEIGHTON  
2  
3  
4  
5  
6  
7  
8

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 DAVID J. DEJEU,  
10  
11

Plaintiff,

v.

12 WASHINTTON STATE DEPARTMENT  
13 OF LABOR AND INDUSTRIES,

Defendant.

14 CASE NO. C13-5401RBL  
15  
16

ORDER

17  
18  
19  
20  
21  
22  
23  
24  
THIS MATTER is before the Court on Defendant's FRCP 12(b)(6) Motion to Dismiss  
[Dkt. #16]. The Court has reviewed the materials filed in support and in opposition to the  
motion, and for the following reasons, GRANTS the Motion to Dismiss.

Plaintiff's Complaint is full of conclusory claims. Plaintiff asserts: "criminal" and  
"human rights violations," alleging that state employees "violated their oath of office, and  
therefore . . . are criminals." The most specific allegations proffered by Plaintiff are that the  
State deprived him of his First, Fifth and Thirteenth Amendment rights, violated his privacy  
rights under the Privacy Act of 1974, falsely advertised, defamed him, and discriminated against  
him.

1 Plaintiff claims that by fining him for failure to register as a contractor with L&I, the  
 2 State interfered with his ability to make a living, and violated his constitutional rights. Plaintiff  
 3 was not listed on L&I's website because he refused to list his Social Security Number during the  
 4 on-line registration process. This information is statutorily required by RCW 18.27.030. L&I  
 5 also disclosed Mr. Dejeu's violation on its website, since he failed to register, in violation of  
 6 RCW 8.27.200(1)(a), and did not pay the \$1,000 fine levied against him. All of L&I's actions  
 7 were taken in accordance with state law.

8 A motion to dismiss for failure to state a claim upon which relief can be granted is  
 9 governed by FRCP 12(b). An action is appropriately dismissed under FRCP 12(b)(6) when a  
 10 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.  
 11 *See Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9<sup>th</sup> Cir. 1990). Put differently,  
 12 12(b)(6) applies when "it appears beyond doubt that the plaintiff can prove no set of facts,  
 13 consistent with the complaint, which would entitle the plaintiff to relief." *Yurtis v. Phipps*, 143  
 14 Wn. App. 680, 689, 181 P.3d 849, 854 (2008). To survive a 12(b)(6) motion, Plaintiff must  
 15 proffer facts sufficient to raise a right to relief above the speculative level. *Bell Atlantic Corp. v.*  
 16 *Twombly*, 127 U.S. 544 (2007). Essentially, Plaintiff must offer non-conclusory, factual  
 17 statements that plausibly suggest a claim entitling him to relief. *See Moss v. U.S. Secret Serv.*,  
 18 572 F.3d 9623, 969 (9<sup>th</sup> Cir. 2009).

19 A motion to dismiss under FRCP 12(b)(6) should be granted sparingly, and only in cases  
 20 where "... plaintiff includes allegations that show on the face of the complaint that there is some  
 21 insuperable bar to relief." *M.H. v. Corp. of Catholic Archbishop of Seattle*, 162 Wn. App. 183,  
 22 189, 252 P.3d 914, 918 (2011) (quoting *Tenore v. AT&T Wireless Servs.*, 126 Wn.2d 322, 330  
 23 P.2d 104 (1988)). This standard protects a plaintiff's interest in adjudicating the merits of his  
 24

1 case. *Gaspar v. Peshastin Hi-Up Growers*, 131 Wn. App. 630, 128 P.3d 627 (2006). However,  
 2 dismissal under 12(b)(6) is still proper in the absence of any cognizable, non-speculative basis  
 3 for liability, and where there is an “insuperable bar to relief.” *See Gaspar*, 131 Wn. App. At 630.

4 The claims asserted by Plaintiff are subject to dismissal as a matter of law for two basic  
 5 reasons. First, the State of Washington maintains Eleventh Amendment immunity from claims  
 6 brought in Federal Court under 42 U.S.C. § 1983. And second, Plaintiff fails to state any claim  
 7 upon which relief can be granted, and his complaint is subject to dismissal under FRCP 12(b)(6).

8 In enacting 42 U.S.C. § 1983, Congress did not override the State’s Eleventh Amendment  
 9 immunity to actions for damages in federal court. *Florida Dep’t. of Health & Rehab. Servs. V.*  
 10 *Florida Nursing Home Ass’n.*, 450 U.S. 147, 101 S. Ct. 1032, 67 L. Ed. 2d 132 (1981). A state  
 11 can waive its Eleventh Amendment immunity. *McLaughlin v. Board of Trustees*, 215 F.3d 1168  
 12 (10<sup>th</sup> Cir. 2000). However, a state’s general waiver of its sovereign immunity is not considered a  
 13 waiver of the Eleventh Amendment immunity. *Leer v. Murphy*, 844 F.2d 628 (9<sup>th</sup> Cir. 1988).  
 14 The Eleventh Amendment precludes actions for damages against a state in federal court under  
 15 §1983. *Doe v. Lawrence Livermore Nat’l Laboratory*, 131 F.3d 836, 839 (9<sup>th</sup> Cir. 1977).

16 The Washington State Supreme Court holds that the State’s waiver of sovereign  
 17 immunity neither constitutes a waiver of Eleventh Amendment immunity, nor subject it to suit  
 18 under § 1983. *Rains v. State*, 100 Wn.2d 660, 674 P.2d 165 (1983). In reaching this holding, the  
 19 Supreme Court found “. . . no express legislative indication that the State [of Washington had]  
 20 consented to suit in federal court for civil rights actions.” *Rains*, 100 Wn.2d at 667, 674 P.2d at  
 21 170. Claims under 42 U.S.C. § 1983 must be pursued against those individuals alleged to have  
 22 committed a civil rights violation. *See Id.*; *Edgar v. State*, 92 Wn.2d 217, 221, 595 P.2d 534  
 23 (1979).

1 Here, Plaintiff has improperly named the State as a defendant to a § 1983 suit in federal  
2 court. As a matter of law, the State of Washington is immune from actions for damages in  
3 federal court brought under 42 U.S.C. § 1983. According, Plaintiff's claim against the State of  
4 Washington must be dismissed.

5 Moreover, Plaintiff cannot demonstrate any set of facts that would entitle him to relief.  
6 His allegations are purely speculative. Though Plaintiff alleges multiple constitutional violations  
7 by the State, there is no evidence whatsoever of any infringement on his First, Fifth or Thirteenth  
8 Amendment rights. Plaintiff's discrimination allegation is not based on a constitutionally  
9 protected distinction. Plaintiff's defamation allegation is not cognizable as a matter of law. The  
10 State's requirement that Plaintiff disclose his Social Security Number in order to register with  
11 L&I does not violate the Privacy Act of 1974. Plaintiff's allegations that L&I's adherence to the  
12 RCWs violated his right is patently unreasonable. In short, Plaintiff can prove no set of facts to  
13 sustain his various claims for constitutional violations on the part of L&I and the State of  
14 Washington. Plaintiff's claim is subject to the "insuperable bar" of the Eleventh Amendment.

15 Defendant's Motion to Dismiss [Dkt. #16] pursuant to FRCP 12(b)(6) is hereby  
16 **GRANTED** and plaintiff's action is **DISMISSED** with prejudice.

17 Dated this 27<sup>th</sup> day of September, 2013.

18   
19

20 RONALD B. LEIGHTON  
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24